

*True proof file
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FEDERAL

C/007/0013

May 18, 2007

**STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114-5801
(801) 538-5340**

This permit, C/007/0013, is issued for the state of Utah by the Utah Division of Oil, Gas and Mining (Division) to:

**UtahAmerican Energy, Inc.
P.O. Box 187
Saint Clairsville, Ohio 43950-0187**

for the Horse Canyon Mine. Two surety bonds are filed with the Division in the amount of \$2,747,328 payable to the State of Utah, Division of Oil, Gas and Mining and the United States Department of Interior, Office of Surface Mining Reclamation and Enforcement (OSM). The Division must receive a copy of this permit signed and dated by the permittee.

Sec. 1 STATUTES AND REGULATIONS - This permit is issued pursuant to the Utah Coal Mining and Reclamation Act of 1979, Utah Code Annotated (UCA) 40-10-1 et seq, hereafter referred to as the Act.

Sec. 2 PERMIT AREA - The permittee is authorized to conduct coal mining and reclamation operations on the following described lands within the permit area at the Horse Canyon Mine (including the Lila Canyon extension), situated in the state of Utah, Carbon and Emery Counties, and located:

Permit Area "A"

Beginning at the SW corner of the SE1/4 SE1/4 of Section 5, T16S, R14E, SLBM; and running thence North 700 feet; thence East 2700 feet; thence North 700 feet; thence East 2025 feet; thence North 550 feet; thence approximately N50°E 4957 feet, more or less; thence approximately N18°W 1228 feet, more or less; thence East 256 feet; thence approximately N18°W 1328 feet, more or less; thence approximately N66°E 682 feet, more or less; thence approximately N11°E 636 feet, more or less; thence approximately N79°W 116 feet, more or less; thence approximately N11°E 1787 feet, more or less; thence approximately S88°E 1023 feet, more or less; thence South 272 feet; thence East 283 feet; thence South 2027 feet; thence East 278 feet; thence approximately S18°E 2111 feet, more or less; thence approximately N72°E

131 feet, more or less; thence approximately S18°E 222 feet, more or less; thence approximately N69°E 2218 feet, more or less; thence approximately N19°W 1092 feet, more or less; thence approximately N67°E 693 feet, more or less; thence East 160 feet; thence approximately S23°E 2921 feet, more or less; thence approximately S60°W 297 feet, more or less; thence South 353 feet; thence West 1071 feet; thence South 301 feet; thence East 450 feet; thence South 370 feet; thence West 322 feet; thence approximately S19°E 1451 feet, more or less; thence approximately S86°E 1200 feet, more or less; thence approximately S35°E 667 feet, more or less; thence approximately S04°W 1012 feet, more or less; thence approximately N87°W 2780 feet, more or less; thence approximately S20°E 2330 feet, more or less; thence approximately N66°E 1090 feet, more or less; thence approximately N24°W 710 feet, more or less; thence approximately N66°E 484 feet, more or less; thence approximately S24°E 618 feet, more or less; thence approximately S66°W 283 feet, more or less; thence approximately S24°E 610 feet, more or less; thence approximately S66°W 414 feet, more or less; thence approximately N24°W 170 feet, more or less; thence approximately S66°W 898 feet, more or less; thence approximately S20°E 1177 feet, more or less; thence East 383 feet; thence South 168 feet; thence East 549 feet; thence South 2827 feet; thence approximately S73°W 341 feet, more or less; thence approximately N10°W 1155 feet, more or less; thence approximately N23°W 1306 feet, more or less; thence approximately S67°W 2297 feet, more or less; thence approximately N20°W 181 feet, more or less; thence approximately S70°W 1940 feet, more or less; thence approximately S20°E 1274 feet, more or less; thence approximately S30°W 427 feet, more or less; thence approximately N20°W 1916 feet, more or less; thence approximately N70°E 2276 feet, more or less; thence approximately N20°W 5822 feet, more or less; thence West 2020 feet; thence South 418 feet; thence West 1350 feet; thence South 1400 feet; thence West 697 feet to the NW corner of the NE1/4 NE1/4 of Section 9, T16S, R14E, SLBM; thence South 1400 feet; thence West 5400 feet; thence North 1400 feet to the Point of Beginning.

Less the following portions thereof:

(a) Beginning approximately 276 feet South and approximately 55 feet West of the NE corner of the NE1/4 SW1/4 of Section 3, T16S, R14E, SLBM; thence approximately S42°W 186 feet, more or less; thence West 942 feet; thence approximately N30°W 277 feet, more or less; thence North 714 feet; thence East 653 feet; thence North 882 feet; thence approximately S18°E 1785 feet, more or less to the Point of Beginning.

(b) Beginning approximately 263 feet South and approximately 540 feet East of the NW corner of the NW1/4 SE1/4 of Section 3, T16S, R14E, SLBM; thence approximately N18°W 2329 feet, more or less; thence East 340 feet; thence North 1157 feet; thence West 704 feet; thence approximately N20°W 762 feet, more or less; thence approximately N75°E 1443 feet, more or less; thence approximately S18°E 2137 feet, more or less; thence approximately S68°E 256 feet, more or less; thence approximately S18°W 2453 feet, more or less; thence West 1705 feet to the Point of Beginning.

(c) Beginning approximately 286 feet West and approximately 437 feet North of the SE corner of the NW1/4 SE1/4 of section 3, T16S, R14E, SLBM; thence East 1281 feet; thence approximately S20°E 4945 feet, more or less; thence approximately S67°W 1527 feet, more or less; thence approximately N20°W 4978 feet, more or less; thence approximately N14°E 582 feet, more or less to the Point of Beginning.

Emery County Road to be excluded.

A strip of land, 100.0 feet wide, 50.00 feet on each side of the centerline of the Emery County roads within the above described permit boundary.

Permit Area "B" (Lila Canyon Extension)

T16S R14E

Section 10: Portions of SE1/4
Section 11: E1/2
Portions of W1/2
Section 12: All
Section 13: All
Section 14: All
Section 15: Portions of E1/2
Portions of SW1/4
Section 22: NE1/4 NE1/4
Section 23: N1/2
SE1/4
E1/2 SW1/4
Section 24: All
Section 25: N1/2
Section 26: E1/2 NE1/4

T16S R15E

Section 19: W1/2 SW1/4
SE1/4 SW1/4
Section 30: NW1/4
SW1/4 NE1/4

This legal description is for the permit area of the Horse Canyon Mine (including the Lila Canyon extension). The permittee is authorized to conduct coal mining and reclamation operations on the foregoing described property subject to the conditions of all applicable conditions, laws and regulations.

- Sec. 3 COMPLIANCE** - The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.
- Sec. 4 PERMIT TERM** - This permit expires on May 6, 2011.
- Sec. 5 ASSIGNMENT OF PERMIT RIGHTS** - The permit rights may not be transferred, assigned or sold without the approval of the Division Director. Transfer, assignment or sale of permit rights must be done in accordance with applicable regulations, including but not limited to 30 CFR 740.13 {e} and R645-303-300.
- Sec. 6 RIGHT OF ENTRY** - The permittee shall allow the authorized representative of the Division, including but not limited to inspectors, and representatives of the Office of Surface Mining Reclamation and Enforcement (OSM), without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay to:
- (a) have the rights of entry provided for in 30 CFR 840.12, R645-400-220, 30 CFR 842.13 and R645-400-110;
 - (b) be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.
- Sec. 7 SCOPE OF OPERATIONS** - The permittee shall conduct coal mining and reclamation operations only on those lands specifically designated as within the permit area on the maps submitted in the approved plan and approved for the term of the permit and which are subject to the performance bond.
- Sec. 8 ENVIRONMENTAL IMPACTS** - The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:
- (a) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
 - (b) immediate implementation of measures necessary to comply; and
 - (c) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.
- Sec. 9 DISPOSAL OF POLLUTANTS** - The permittee shall dispose of solids, sludge, filter backwash or pollutants in the course of treatment or control of waters or emissions to

the air in the manner required by the approved Utah State Program and the Federal Lands Program which prevents violation of any applicable state or federal law.

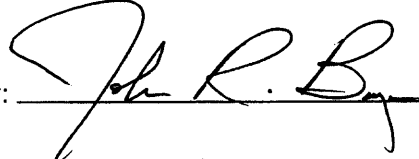
- Sec. 10 CONDUCT OF OPERATIONS** - The permittee shall conduct its operations:
- (a) In accordance with the terms of the permit to prevent significant, imminent environmental harm to the health and safety of the public; and
 - (b) Utilizing methods specified as conditions of the permit by the Division in approving alternative methods of compliance with the performance standards of the Act, the approved Utah State Program and the Federal Lands Program.
- Sec. 11 EXISTING STRUCTURES** - As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.
- Sec. 12 RECLAMATION FEE PAYMENTS** - The operator shall pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.
- Sec. 13 AUTHORIZED AGENT** - The permittee shall provide the names, addresses and telephone numbers of persons responsible for operations under the permit to whom notices and orders are to be delivered.
- Sec. 14 COMPLIANCE WITH OTHER LAWS** - The permittee shall comply with the provisions of the Water Pollution Control Act (33 USC 1151 et seq.) and the Clean Air Act (42 USC 7401 et seq), UCA 26-11-1 et seq, and UCA 26-13-1 et seq.
- Sec. 15 PERMIT RENEWAL** - Upon expiration, this permit may be renewed for areas within the boundaries of the existing permit in accordance with the Act, the approved Utah State Program and the Federal Lands Program.
- Sec. 16 CULTURAL RESOURCES** - If during the course of mining operations, previously unidentified cultural resources are discovered, the permittee shall ensure that the site(s) is not disturbed and shall notify the Division. The Division, after coordination with OSM, shall inform the permittee of necessary actions required. The permittee shall implement the mitigation measures required by Division within the time frame specified by Division.
- Sec. 17 APPEALS** - The permittee shall have the right to appeal as provided for under R645-300-200.

Sec. 18 SPECIAL CONDITIONS - There are special conditions associated with this permitting action as described in attachment A.

The above conditions (Secs. 1-18) are also imposed upon the permittee's agents and employees. The failure or refusal of any of these persons to comply with these conditions shall be deemed a failure of the permittee to comply with the terms of this permit and the lease. The permittee shall require his agents, contractors and subcontractors involved in activities concerning this permit to include these conditions in the contracts between and among them.


These conditions may be revised or amended, in writing, by the mutual consent of the Division and the permittee at any time to adjust to changed conditions or to correct an oversight. The Division may amend these conditions at any time without the consent of the permittee in order to make them consistent with any federal or state statutes and any regulations

THE STATE OF UTAH

By: 

Date: 5/18/07

I certify that I have read, understand and accept the requirements of this permit and any special conditions attached.


Authorized Representative of Permittee

Date: 5/23/07

Attachment A

SPECIAL CONDITIONS

1. UtahAmerican Energy, Inc (UEI) will submit water quality data for the Horse Canyon Mine, in an electronic format through the Electronic Data Input web site, <http://hlunix.hl.state.ut.us/cgi-bin/appx-ogm.cgi>.
2. UEI may not conduct coal development or mining operations on federal coal leases SL-066145, SL-066490, SL-069291, U-0126947, U-014217, and U-014218 until Secretarial approval of the mining plan has been obtained.
3. Within 30 days of permit issuance, UEI must incorporate into their Mining and Reclamation Plan (MRP) the following:
 - UEI must commit in the MRP to report actual annual water depletions to OSM through the Division by September 30 of each year. UEI must also provide a statement acknowledging that OSM could reinitiate Section 7 and develop new protection alternatives in the event that the Recovery Program is unable to implement recovery plans for the fishes in a timely manner.
 - UEI must clarify information in the Environmental Cultural Resource section of the MRP-Part B including information on the following: Programmatic Agreement, protection of listed sites, direct/indirect impact, and cultural or historic sites within the permit and surrounding area.
 - UEI must move Appendix X-1 and X-2 from the MRP-Part A Volume IV to the Confidential File.
 - UEI has already agreed to conduct yearly fly-over raptor surveys starting in 2005 (Sections 322.220 (pg 10) and 330 (pg 18) Chapter 3 MRP-Part B). In addition, UEI must refer to the mining map overlaid with potential cliff habitat (Plates 5-3 and 5-5 MRP-Part B) for guidance. This yearly raptor survey program will provide pre-construction baseline and post-disturbance data sufficient to determine or update protection plans or enhancement/mitigation measures as operations change. As part of this yearly raptor survey requirement, UEI must submit all results of the raptor fly-over surveys to the Division in Annual Reports and must immediately contact the Division, BLM, and USFWS following any raptor survey that shows that eagles are tending nests or nesting within the surveyed area. The agencies will immediately coordinate to determine if UEI must implement appropriate measures. If the agencies recommend mitigation, UEI must submit mitigation plans to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 (Chapter 3 MRP-Part B) as a complement to the existing commitment on page 38 (Chapter 3 MRP-

Part B) as well as in Section 333.300 (Chapter 3 MRP-Part B) as part of the existing "protection" list. (R645-301-322.100, -322.220)

- UEI has already agreed to adhere to raptor exclusionary periods. The provisions in this condition, however, provide additional protection measures in the event of unforeseen changes in construction or mine plans, or in the case of emergency situations that may force UEI to conduct activity near or within the 0.5 mile buffer zone of raptor nest and during raptor exclusionary periods (February 1 to July 15 for golden eagles). The MRP-Part B must include a provision that states that, in the event of unforeseen events, UEI will immediately contact the Division, BLM, DWR, and USFWS. The agencies will immediately coordinate to determine appropriate measures that may include: 1) conducting ground surveys, in coordination with DWR, to confirm if birds are tending nests or are nesting and possibly determine the life stage of the offspring; 2) developing a mitigation plan, in coordination with the agencies, for possible impacts to nests or birds; or 3) ceasing operations until the end of breeding season to avoid 'take'. If the agencies recommend surveys, UEI must submit all survey results to the Division in Annual Reports. If the agencies recommend mitigation, UEI must submit all mitigation plans to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 (Chapter 3 MRP-Part B) as a complement to the existing commitment on page 38 (Chapter 3 MRP-Part B) as well as in Section 333.300 (Chapter 3 MRP-Part B) as part of the existing "protection" list. (R645-301-322.100, -322.220)
- UEI must clearly illustrate the number of all raptor nests (not just golden eagle) within the subsidence zone. If the mining plan shows that there are one or more raptor nests located within the subsidence zone, UEI must provide a mitigation plan for possible subsidence of the nest(s). UEI must coordinate with the Division, DWR, USFWS, and BLM to develop a mitigation plan. The plan must include the name of the lead agency, proposed date of implementation, a reporting mechanism, as well as the mitigation proposal. The MRP-Part B must include a provision that states UEI will apply for a nest 'take' permit, through the USFWS, if the mitigation plan includes preventing raptors from accessing nests. UEI must apply for 'take' permits 6-12 months prior to potentially subsiding nests. UEI must submit all mitigation plans and final reports to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 (Chapter 3 MRP-Part B) as a complement to the existing commitment on page 38 (Chapter 3 MRP-Part B) as well as in Section 333.300 (Chapter 3 MRP-Part B) as part of the existing "protection" list. (R645-301-322.100, -322.220)
- Corresponding to subsidence and raptors, UEI must remove the conflicting information on pages 10 and 16/17 of Chapter 3 MRP-Part B. The statement on page 10 (Chapter 3 MRP-Part B) discusses that a nest may be subsided, which conflicts with the commitment on page 16/17 (Chapter 3 MRP-Part B) that states, "First seam mining (Leaving the pillars) should adequately protect

existing raptor nests from subsidence". (R645-301-121.200)

UEI must report actual annual water depletions to OSM – Western Region, by September 30 of each year.

4. Within 30 days of permit issuance, UEI must incorporate into their Mining and Reclamation Plan (MRP) the following:
 - UEI must provide clear and concise information concerning the Programmatic Agreement, protection of listed sites, direct/indirect impact, and information on sites within the permit and surrounding area.
 - UEI must move Appendix X-1 and X-2 from the MRP-Part A Volume IV to the Confidential File.
 - UEI must conduct yearly fly-over raptor surveys starting in 2005 in Sections 322.220 (pg 10) and 330 (pg 18). UEI must refer to the mining map overlaid with potential cliff habitat (Plates 5-3 and 5-5) for guidance. Pre-construction surveys must provide baseline and post-disturbance will provide data sufficient to determine or update protection plans or enhancement/mitigation measures as operations change. As part of this normal mining operation requirement, UEI must submit all results of the raptor fly-over surveys to the Division in Annual Reports and must immediately contact the Division, BLM, and USFWS following any raptor survey that shows that eagles are tending nests or nesting. The agencies will immediately coordinate to determine if UEI must implement appropriate measures. If the agencies recommend mitigation, UEI must submit mitigation plans to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 of the MRP-Part B as a complement to the existing commitment on page 38 as well as in Section 333.300 as part of the existing "protection" list. (R645-301-322.100, - 322.220)
 - UEI agreed to adhere to raptor exclusionary periods, the provisions in this paragraph provide additional protection measures in the event of unforeseen changes in construction or mine plans, or in the case of emergency situations that may force UEI to conduct activity near or within the 0.5 mile buffer zone of raptor nest and during raptor exclusionary periods (February 1 to July 15 for golden eagles). The MRP-Part B must include a provision that states that, in the event of unforeseen events, UEI will immediately contact the Division, BLM, DWR, and USFWS. The agencies will immediately coordinate to determine appropriate measures that may include: 1) conducting ground surveys, in coordination with DWR, to confirm if birds are tending nests or nesting and possibly determine the life stage of the offspring; 2) developing a mitigation plan, in coordination with the agencies, for possible impacts to nests or birds; or 3) ceasing operations until the end of breeding season to avoid 'take'. If the agencies recommend surveys, UEI must submit all survey results to the Division in Annual Reports. If the agencies recommend mitigation, UEI must submit all mitigation plans to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 of the MRP-Part B as a

complement to the existing commitment on page 38 as well as in Section 333.300 as part of the existing "protection" list. (R645-301-322.100, -322.220)

- UEI must clearly illustrate the number of all raptor nests (not just golden eagle) within the subsidence zone. If the mining plan shows that there are one or more raptor nests located within the subsidence zone, UEI must provide a mitigation plan for possible subsidence of the nest(s). UEI must coordinate with the Division, DWR, USFWS, and BLM to develop a mitigation plan similar to the plan developed for the Bear Canyon Mine between 2006-2008. The plan must include the name of the lead agency, proposed date of implementation, a reporting mechanism, as well as the mitigation proposal. The MRP-Part B must include a provision that states UEI will apply for a nest 'take' permit, through the USFWS, if the mitigation plan includes preventing raptors from accessing nests. UEI must apply for 'take' permits 6-12 months prior to potentially subsidizing nests. UEI must submit all mitigation plans and final reports to the Division for incorporation into Appendix 3 of the MRP-Part B. These provisions must be included in Section 358.100 of the MRP-Part B as a complement to the existing commitment on page 38 as well as in Section 333.300 as part of the existing "protection" list. (R645-301-322.100, -322.220)
- Corresponding to subsidence and raptors, UEI must remove the conflicting information on pages 10 and 16/17 of Chapter 3. The statement on page 10 discusses that a nest may be subsidized, which conflicts with the commitment on page 16/17 that states, "First seam mining (Leaving the pillars) should adequately protect existing raptor nests from subsidence". (R645-301-121.200)
- From a previous submittal, UEI included changes to the MRP concerning raptors that conflicted with information elsewhere in the Application. UEI must provide clarification for these inconsistencies in the MRP-Part B